

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-FIVE

Indianapolis, IN

CELADON TRUCKING SERVICES, INC.
d/b/a ZIPP LOGISTICS¹

and

Case 25-RC-10212

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, UAW

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held January 21, 2004, before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board, to determine an appropriate unit for collective bargaining.²

I. ISSUES

The Petitioner, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, seeks an election within a unit comprised of warehouse employees employed by the Zipp Logistics division of Celadon Trucking Services, Inc., at two of its warehouses located in Indianapolis, Indiana. One warehouse is located at 254 South Kitley Avenue, (hereafter referred to as the “Kitley facility”) while the other is located at 2900 North

¹ The name of the Employer is amended to correctly reflect its legal name.

² Upon the entire record in this proceeding, the undersigned finds:

a. The hearing officer's rulings made at the hearing are free from error and are hereby affirmed.

b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

c. The labor organization involved claims to represent certain employees of the Employer.

d. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

Shadeland Avenue (hereafter referred to as the "Shadeland facility").³ Approximately ten potential unit members work at the Shadeland facility and 30 at the Kitley facility.

The Petitioner contends that a combination of the Kitley and Shadeland facilities is an appropriate unit since employees of both facilities share a community of interest. The Employer, however, contends that the only appropriate unit is one which includes employees employed at all five of its warehouse facilities.

II. DECISION

For the reasons discussed in detail below, including the community of interest shared by the petitioned employees, it is concluded that employees employed at the Employer's Shadeland Avenue and Kitley Avenue warehouses constitute a unit appropriate for purposes of collective bargaining.

The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time warehouse employees, including lead persons and shift coordinators, employed by the Employer at its 254 South Kitley Avenue and 2900 North Shadeland Avenue warehouses located in Indianapolis, Indiana; BUT excluding all truck drivers, office and clerical employees, professional employees, guards and supervisors as defined in the Act.

The unit found appropriate herein consists of approximately 40 employees for whom no history of collective bargaining exists.

III. STATEMENT OF FACTS

Zipp Logistics (hereinafter referred to as the "Employer") is an operational division of Celadon Trucking Services, Inc. Celadon is a common carrier, and Zipp is engaged in providing warehouse and logistic services. Zipp operates a total of five facilities, including the Shadeland and Kitley warehouses. One of the remaining facilities is also located in Indianapolis on Raymond Street, while a fourth warehouse is located about 50 miles south of Indianapolis in Columbus, Indiana. The fifth warehouse is located in Tulsa, Oklahoma. The Petitioner does not seek to represent employees of these latter three facilities. None of the Employer's facilities has a history of collective bargaining.

³ The Petitioner amended its petition at hearing to add the Shadeland facility to the petitioned unit.

While all of the warehouses store products related to the automotive industry, Kitley and Shadeland exclusively service one customer: International Truck and Engine.⁴ The Kitley facility receives, stores, picks and ships component parts used in the manufacture of vehicular engines manufactured by International Truck, while the Shadeland facility houses completed engines. The employees of Kitley and Shadeland possess similar skills, utilizing similar equipment to perform similar functions. The primary equipment used by both groups are forklifts and "RF scanners." The record indicates, however, that Shadeland employees receive some additional on-the-job training to allow them to move engines weighing as much as 5,000 pounds. Kitley operates 24 hours a day from 11:00 PM on Sunday until 11:00 PM the following Friday. The facility is closed on weekends. The Shadeland facility shares the same weekday hours, but also has a weekend shift. The two facilities are located approximately five miles apart.

Ten to fifteen employees work at the Raymond Street facility which is operational five days a week, from 7:00 AM to 11:00 PM. The Raymond Street facility does some long-term storage of products from South America, and also handles paper products. Tulsa employs 10 employees and stores finished engines.

One Site Manager oversees both the Shadeland and Kitley operations.⁵ Three shift supervisors, each of whom oversees the operations of a shift, work at the Kitley facility and report to this Manager. There is only one supervisor at the Shadeland warehouse, and he too reports to the Site Manager. The supervisor at Shadeland is on call twenty-four hours a day. The Site Manager reports to Celadon's Vice-President of Logistics. Each supervisor interviews employment applicants for the shift s/he supervises, and selects applicants for hire. Applicants are administered a basic math and skills test and their prior employment is verified. After a supervisor makes the hiring decision, the successful applicant is sent to Celadon headquarters, which is located in Indianapolis, where a drug test is administered. Subject to passage of the drug test, the supervisor's hiring decision is final. Each supervisor is responsible for day-to-day supervision of warehouse employees on his/her shift, responding to customer concerns and the overall operation of the warehouse.

Celadon performs all payroll, accounting, personnel, and other administrative functions for the five warehouses. Uniform employment policies and work rules apply to all Celadon employees, including those within the Zipp Logistic division. Employees at all warehouses earn the same wage rates and are eligible to receive the same fringe benefits. Celadon maintains a seniority list of all Celadon employees, including those who work for Zipp. Seniority lists are used to determine vacations and pay grades of employees. On-the-job training is received by employees at the warehouse at which they work.

⁴ The customer name "International Truck and Engine" was used interchangeably with that of "Navistar" by the parties.

⁵ The parties stipulated that the Site Manager is a supervisor within the meaning of Section 2(11) of the Act.

The record indicates that interchange occurs between the supervisors of the Kitley and Shadeland warehouses. Kitley supervisors at times perform work at the Shadeland facility, such as conducting accident investigations. The Shadeland supervisor regularly attends meetings at the Kitley warehouse involving their common customer. Testimony indicates that the Kitley night shift supervisor frequently visits the Shadeland warehouse, although his reason for doing so is not indicated in the record. There is no evidence that supervisors from Kitley or Shadeland perform work at any of the other three warehouses.

There is also a history of employee transfers between Shadeland and Kitley. The Shadeland warehouse became operational in October 2002. The engines now handled by the Shadeland facility were originally warehoused at the Kitley facility. The Shadeland facility was opened due to a lack of space at Kitley. At the time Shadeland became operational, four employees from Kitley permanently transferred to Shadeland. Thus, at its startup, approximately 40% of Shadeland's workforce were former Kitley employees. In February of 2003 a fifth employee was permanently transferred from Kitley to Shadeland after a Kitley supervisor realized that the newly hired employee had prior experience operating forklifts with heavy capacities, such as those used at Shadeland.

Temporary interchange between the two groups of employees has also occurred. The record reflects approximately six instances of temporary employee transfers between facilities during 2003. In addition, approximately a year and one-half ago a Kitley employee was assigned to work at Shadeland as a leadperson for two and one-half months. The record, however, fails to reflect any permanent or temporary transfers between either Shadeland or Kitley and any of the Employer's remaining three facilities.

Other types of contact also occurs between the Shadeland and Kitley employees. For example, Kitley employees transport engines and parts to the Shadeland facility. Each week those Shadeland employees who wear uniforms,⁶ pick up clean uniforms at the Kitley warehouse. Kitley and Shadeland employees also attend an annual summer picnic held at the Kitley facility for their common customer, International Truck and Engine. There is no evidence, however, that Kitley or Shadeland employees experience contact with employees of the other three warehouses.

Some product interchange also occurs between the two warehouses. According to the testimony of a Kitley employee, parts from the Kitley warehouse are transported to Shadeland on a daily basis, and engines in excess of Shadeland's storage capacity are stored at Kitley.

IV. DISCUSSION

Under Section 9(b) of the Act, the Board has broad discretion to determine "the unit appropriate for the purposes of collective bargaining" in each case "in order to assure to

⁶ Wearing uniforms is optional.

employees the fullest freedom in exercising the rights guaranteed by the Act," NLRB v. Action Automotive, Inc., 469 U.S. 490, 494-97 (1985). The Board's discretion extends to selecting an appropriate unit from the range of units which may be appropriate in any given factual setting; it need not choose the most appropriate unit, American Hospital Association v. NLRB, 499 U.S. 606, 610 (1991); P.J. Dick Contracting, Inc., 290 NLRB 150, 151 (1988).

Where, as here, both parties seek multi-facility units but disagree upon which groups of employees comprise an appropriate unit, and where there is an absence of bargaining history, the touchstone for determining an appropriate unit is a community-of-interest analysis, Florida Casino Cruises, Inc., 322 NLRB 857, 858 (1997). The Employer's reliance upon the Board's single-facility analytical framework in its post-hearing brief is misplaced, since neither party seeks a single-facility unit. Thus, the single-facility presumption of appropriateness is inapplicable, and a community-of-interest analytical approach is utilized, Capitol Coors Co., 309 NLRB 322 (1992).

To determine whether employees who work at different locations share a community of interest, the Board considers whether there exists (1) a similarity of employee skills, duties and working conditions; (2) a functional integration of the business, including employee interchange; (3) a centralized control of labor relations and supervision; (4) the geographical distance between facilities; and (5) employee choice," Capitol Coors Co., *Id.*

The employees in the petitioned unit perform essentially the same duties: receiving, storing, picking and shipping product. They utilize similar equipment; namely forklifts and RF Scanners. While there is some testimony that moving engines may require greater skill than moving engine parts, this involves a difference in degree of skill, not different skills. Further, the record indicates that the only training provided warehouse employees by the Employer is on-the-job training in the operation of forklifts sufficient for the employees to secure OSHA certifications. Employees of the two warehouses also work similar hours.

Although there is a centralized administration of labor relations and personnel matters, with all employees receiving similar wages, benefits and other terms and conditions of employment, the employees at Shadeland and Kitley have little else in common with employees of the other three warehouses. They share no supervision with other facilities; and experience no interchange or contact with employees of the other three warehouses. There is no evidence that any permanent or temporary transfers of employees have occurred between Kitley/Shadeland and either Raymond Street, the Columbus or Tulsa facilities.

Although the employees who work on each shift at Kitley and Shadeland are directly supervised by their respective shift supervisors, all employees share indirect common supervision in the personage of the Site Manager located at Kitley.

The two facilities also share product interchange, and are located only five miles apart. Although the Raymond Street warehouse is located in the same city as Kitley and Shadeland, there is no evidence that the employees located at the Raymond Street facility share any genuine community of interest with the other two groups of employees.

Since the employees perform similar duties, possessing similar skills and utilizing similar equipment; warehouse similar and in some cases the same products for a common customer; share common indirect supervision, work hours and other terms and conditions of employment; experience interchange and contact on a regular basis; are subject to the same personnel policies and rules; and receive similar wages and benefits, it is concluded that the employees of the Employer who work at its warehouses located at 254 South Kitley Avenue and 2900 North Shadeland Avenue in Indianapolis, Indiana, constitute a unit appropriate for purposes of collective bargaining.

V. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned, among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the unit who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are former unit employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW.

VI. NOTICES OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices, Club Demonstration Services, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

VII. LIST OF VOTERS

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is directed that 2 copies of an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the undersigned within 7 days from the date of this Decision. North Macon Health Care Facility, 315 NLRB 359 (1994). The undersigned shall make this list available to all parties to the election. In order to be timely filed, such list must be received in Region 25's Office, Room 238, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Indianapolis, Indiana 46204-1577, on or before **March 5, 2004**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

VIII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099-14th Street. N.W., Washington, DC 20570. This request must be received by the Board in Washington by March 12, 2004 .

SIGNED at Indianapolis, Indiana, this 27th day of February, 2004.

/s/ Roberto G. Chavarry

Roberto G. Chavarry
Regional Director
National Labor Relations Board
Region 25
Room 238, Minton-Capehart Building
575 North Pennsylvania Street
Indianapolis, IN 46204-1577

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